

REMARKS

Applicant respectfully requests reconsideration of this application, as amended herein. Claims 1-9, 12, and 17 were pending in the application. Claims 1 and 12 have been amended for further clarification, and no new claims have been added. Therefore, Claims 1-9, 12, and 17 are pending in the application.

The Examiner provisionally rejected Claims 1, 4, 7-9, and 12 of the instant application under the judicially created doctrine of obviousness-type double patenting as conflicting with Claims 1, 3, 11, and 16 of co-owned Application No. 09/981,467. Applicant respectfully traverses the rejection. Games of chance are distinguished by unique characteristics, such as the elements used for play of a game, the method steps carried out for play of the game, odds associated with obtaining specific winning combinations, and payouts for wagering. Assorted combinations of such characteristics lure players to the games and fill gambling casinos throughout the country. The game described and claimed in the instant application is completely different from that described in Application No. 09/981,467. Applicant has amended the claims in each application in order to obviate conflict. Upon indication of allowable subject matter in each application, Applicant will submit an appropriate terminal disclaimer.

The Examiner rejected Claims 1-9, 12, and 17 under 35 U.S.C. 103(a) as being unpatentable over Moody et al. [US5976016]. The Examiner states that it would have been obvious to incorporate a specific order to game symbols and corresponding payable in order to attract players. Applicant respectfully traverses the rejection.

It is not merely the ordering of indicia that provide winning combinations. The color of the playing elements is an equally important element. A color/number combination is required for a winning combination in the Table of Values. Independent Claims 1 and 12 have been amended to more clearly recite a limitation for the Table of Values that Moody et al. cannot achieve. As an example, a winning combination according to the present invention may include five balls, all colored black and all with the number eight thereon. In Moody et al., if it included a similar winning combination (which it does not), the combination would have to be something like five cards, all with the eight of spades. Nowhere does Moody et al. teach or remotely suggest such a winning combination. It is foreign to traditional hands of poker. Accordingly,

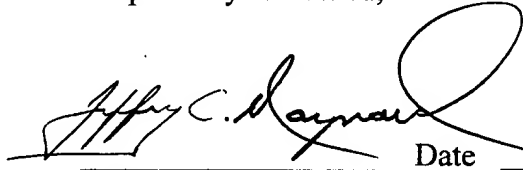
Applicant asserts that it would not have been obvious to modify Moody et al. to obtain the invention as taught in the present application. Therefore, Claims 1 and 12 are patentably distinguished.

Claims 2-9 depend from Claim 1 and incorporate the same limitations as Claim 1, which, as described above, is patentably distinguished from Moody et al. Thus, Claims 2-9 are patentably distinguished. Claim 17 depends from Claim 12 and incorporates the same limitations as Claim 12, which, as described above, is patentably distinguished from Moody et al. Thus, Claim 17 is patentably distinguished.

### CONCLUSION

Applicant has made a diligent effort to address the objections identified by the Examiner and believe all claims remaining in the application are allowable. Accordingly, a Notice of Allowability is respectfully requested. However, if the Examiner is of the opinion that the present application is not in condition for allowance, Applicant respectfully requests that the Examiner contact Applicant's attorney at the telephone number listed below so that additional changes may be discussed.

Respectfully submitted,

 6/10/04  
Date  
Jeffrey C. Maynard  
Reg. No. 46,208

Attorney for Applicant  
154 Barbara Road  
Severna Park, MD 21146  
Phone: (410) 421-5031  
(410) 347-9496